IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 293 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Applicant(s)
Versus
PRAHLADBHAI SHIVRAM PATEL & 6 - Respondent(s)

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Appearance :
MS ML SHAH, APP for Applicant(s) : 1,
MR PRAFUL J BHATT for Respondent(s) : 1 - 7.
MR JIVANLAL G SHAH for Respondent(s) : 1 - 7.

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 09/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1.Criminal Case No.963 of 1980 has been registered against the present respondent

Nos.1 to 7 in pursuance of charge sheet submitted by Bayad Police Station for the offences punishable under Secs.406, 409, 477-A read with Sec.120(b) of IPC. When hearing of said criminal case was going on in the Court of learned J.M.F.C., Modasa, wherein evidence of more than 12 witnesses has been recorded, the present respondent Nos.1 to 7 submitted a written application to the learned District and Sessions Judge, Sabarkantha at Himmatnagar, for transferring the said criminal case from the concerned Court to any other Court. Said application has been numbered as Application No.2 of 1984. As the present respondent No.8, Mr.K.R.Kher, an advocate, was appearing in the Criminal Case on behalf of 7 applicants, he was called upon to argue the matter on behalf of the applicant and, according to him, he assisted the Court and the matter was argued by him. After hearing the learned advocate for the applicants and the learned Addl. Public Prosecutor appearing for the State, the learned District Judge vide order dated 2-2-1984 allowed the said application and transferred the matter into the other Court.

2. It appears that on the basis of a cutting of newspaper “The Indian Express” dated 25-3-1984, that a false complaint of the demand of

bribe by a Magistrate of Modasa was made the basis of a transfer application of the case from the Court of that Magistrate, a Division Bench of this Court had initiated suo motu proceedings under Section 12 of the Contempt of Courts Act, 1972 which was numbered as Criminal Miscellaneous Application No.522 of 1984.

3. On 22-6-1984, the Division Bench while hearing the aforesaid application, in exercise of its powers under Section 401 of the Criminal Procedure Code, 1973, suo motu took up in revision the above referred order dated 2-4-1984 of the Court of Sessions Judge, Sabarkantha at Himatnagar in Transfer Application No.2 of 1984, which was numbered as Criminal Revision Application No.293 of 1943 and passed the following order:

"While hearing the Misc.Criminal Application No.522 of 1984 on 21-6-1984, we came across a similar charge made against the very Magistrate in the Transfer Application No.2 of 1984 decided by the learned Sessions Judge, Sabarkantha at Himatnagar dated 2-2-84 filed by one Nathalal Jorabhai. We would, therefore, desire that the record of that transfer application and also record of the original criminal case, which was sought to be transferred, be called for from the

learned Sessions Judge, Himatnagar. We order accordingly."

4. Subsequently, the following order was passed on 17-7-1984:

"After perusal of the papers, we think it expedient in the interest of justice to call for the remarks of the learned Magistrate."

Thereafter, vide order dated 27-7-1984, the Court passed the following order:

"It prima facie appears, after perusal of the transfer application, the order of the learned Sessions Judge and the letter of the magistrate concerned dated 7-6-84 that all accused in the Criminal Case of 963/80 of the Court of the J.M.F.C. Modasa and also against advocate Mr.K.R.Kher of Modasa.

Rule returnable on 21-8-1984. All those persons are directed to remain personally present before the Court."

Thereafter, matter went to another bench wherein following order has been passed on 3rd September, 1984 and matter was sent back to concerned Court which initiated the proceedings:

"In these suo motu contempt proceedings,

earlier N.H.Bhatt and M.B.Shah,JJ. by an order dated 17.7.1984 initiated contempt proceedings against the present 7 accused who were ordered to remain present before this Court on 21.8.1984. These suo motu proceedings were initiated as the aforesaid Division Bench prima facie felt after perusing the transfer application, order of the learned Sessions Judge and the letter of the learned Magistrate dated 7.6.1984, that all the accused in criminal case No.963 of 1980 of the Court of the Judicial Magistrate, First Class, Modasa and also the accused's advocate Mr.K.R.Kher were prima facie guilty of contempt of Court. Pursuant to the rule issued by this Court in the aforesaid suo motu proceedings, the concerned accused have appeared through their learned counsel. Accused No.3 has filed his affidavit-in-reply. Mr.J.G.Shah, learned Advocate for the concerned accused, has stated before us that so far as accused No.3 is concerned, his stand is that he did not have the talk with the learned magistrate which was made the basis of the transfer application. In view of the aforesaid stand taken by the concerned accused, in our view, it would be proper if these proceedings are placed before the same bench which initiated the suo motu proceedings so that proper order can be

passed in the present suo motu proceedings. It is, therefore, directed that the papers of these proceedings may be placed before the Division Bench consisting of N.H.Bhatt and M.B.Shah, JJ.

Suitable order may be obtained by the office from that bench regarding further date of hearing of the matter. The concerned respondents may be informed therefor. Order accordingly.“

Meanwhile, present respondents appeared through their advocate and filed their reply. Thereafter, matter has been placed in various Courts. Since the matter has been numbered as Criminal Revision Application, it has been reflected in the board of learned Single Judge wherein the learned Single Judge (Coram: D.P.Buch,J.) and the learned Single Judge (Coram: J.R.Vora,J.) vide separate orders treated this matter as a contempt matter. Ultimately, it has been placed into the Division Bench taking up the regular contempt matters wherein after 4-5 adjournments, in view of the endorsements made by that Bench on 13-3-2007, the matter has been placed in this Court. The endorsement reads as under:

“Let the matter receives consideration by a

Bench to which one of us (A.L.Dave,J) is not a party.“

Since the record showed that records and proceedings called for were lying into the Court, this Court vide order dated 23-3-2007 directed to send them back to the District and Sessions Court for proceeding further into the matter.

5. Today, all the parties including the present respondents are personally present in Court along with their advocate. They were roll-called and have been identified as respondents No.1 to 8 by their learned counsel, Mr.Praful J.Bhatt. They have tendered unconditional apology in their reply which they filed way back in the year 1984 itself. Then also, they have filed separate affidavits today tendering unconditional apology. The said affidavits are ordered to be taken on record.
6. It is required to be noted that transfer application has been submitted by the parties on the basis of serious allegations against the concerned Judge, who was dealing with Criminal Case. It is also required to be noted that same has been accepted by the learned District Judge after giving opportunity to the parties concerned and it has become final between the parties till the

High Court took the Criminal Revision Application up as suo-moto proceedings under Sec.401 of the Criminal Procedure. We are not dealing with the same because it reflects that it has been converted into a contempt petition and has been proceeded as a contempt petition for all these years.

5. However, facts remain that specific order has been passed by the High Court on 27-7-1984 to remain personally present into the Court all the concerned persons including the lawyer who argued the matter before the court below. 27 years have been passed since then and this itself is a punishment to all the parties concerned. We are not saying anything further into the matter. However, looking to the facts and circumstances and considering the fact that all the respondents have tendered unconditional apology, we say that it is a case wherein the contempt proceedings initiated against the respondents No.1 to 8 are required to be dropped.

7. In view of the above, the contempt proceedings initiated against the respondents No.1 to 8 are dropped. Rule is discharged.

(R.P.DHOLAKIA,J.)

(HARSHA DEVANI,J.)

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